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April 13, 2023

VIA ECF

Honorable Jennifer H. Rearden
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Sisters of Life v. McDonald*, No. 22-cv-7529 (JHR)

Your Honor,

I am counsel for defendant James V. McDonald, Acting Commissioner of the New York State Department of Health (“DOH”)¹ in the above-referenced action, which was reassigned to Your Honor on January 27, 2023. Pursuant to the order entered by Judge Schofield on January 18, I write on behalf of all parties with a status update and to request a further 90-day stay of this action.

This case concerns a facial and as-applied challenge brought by plaintiff Sisters of Life, a Catholic community of religious sisters, to Assembly Bill A5499 (“A5499”), a state law which directs DOH to conduct a study on the impact of limited-service pregnancy centers on the ability of women to access the full array of reproductive and sexual healthcare information and services covered by the State’s Medicaid program. Among other things, A5499 authorizes DOH to request information from limited-service pregnancy centers as part of the study directed by the State Legislature.

Plaintiff commenced this action in September 2022 by filing a complaint and a motion for a preliminary injunction. Shortly thereafter, the parties conferred and agreed to temporarily stay the litigation while DOH worked to implement the statute, while also protecting the interests asserted by plaintiff. In October 2022, the Court approved the parties’ joint application for a 90-day stay of the litigation, denying plaintiff’s preliminary injunction motion without prejudice to its renewal. (ECF Doc. No. 28.) In January 2023, the Court approved the parties’ joint application

¹ On January 1, 2023, Mary T. Bassett resigned as Commissioner of DOH and James V. McDonald was appointed as Acting DOH Commissioner. Pursuant to Fed. R. Civ. P. 25(d), Acting Commissioner McDonald is automatically substituted as defendant in this action.

Hon. Jennifer H. Rearden

April 13, 2023

Page 2 of 2

for another 90-day stay as DOH continued its implementation efforts, staying this action through April 10, and directing that the parties file a joint status letter by April 17. (ECF Doc. No. 30.)

Since the Court's January 18, 2023 order, DOH has made meaningful progress, but has not finished implementing the study authorized by A5499 that is the subject of plaintiff's challenge. In light of the foregoing, the parties respectfully request a further 90-day stay of the litigation while DOH continues its implementation of A5499. The parties continue to believe that such further stay of the litigation is the most efficient course for the parties and the Court at this time.

As before, the parties agree that the stay may be terminated by either party at any time. The parties further agree that, at the expiration or termination of the stay, DOH will not request any documents or information from plaintiff pursuant to A5499 for the additional period of time that may be required for plaintiff to re-file a preliminary injunction motion, brief that motion, and for the Court to issue a decision on that motion. Conversely, plaintiff agrees to provide defendant a reasonable amount of time to respond to a renewed preliminary injunction motion.

DOH further agrees that if it intends to commence the process of issuing document or information requests to other entities under A5499 prior to the expiration or termination of the stay, it will notify plaintiff at that time, to allow plaintiff the option of terminating the stay and reinstating this litigation, including its motion for a preliminary injunction.

If further litigation is required, the parties agree to confer and propose an agreed-upon briefing schedule to the Court for the preliminary injunction motion and other matters as required by the Federal Rules of Civil Procedure and Your Honor's individual practices.

The parties respectfully request that the Court grant their joint application for a further 90-day stay of the litigation, subject to the terms of the parties' agreement as set forth above.

Respectfully submitted,

/s/

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